IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 145 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

ARUNA MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 145 of 1986
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 10/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The Income-tax Appellate Tribunal, Bench -B, Ahmedabad has referred to the following question of law for the opinion of this Court in respect of assessment years 1982-83 and 1983-84:-

(i) Whether, on the facts and in the circumstances of the case and in view of the legal provisions is the assessee entitled to the allowance of expenditure on account of 1) medical benefits 2) house rent allowance and 3) personal accident insurance premium of Managing Directors ? Is the Tribunal right in law in holding that the said expenditure should not be considered for disallowance under Section 40(c) of the Income-tax Act, 1961?

(ii) Whether, the Appellate Tribunal is right in law and on facts in holding that cash payment of house rent allowance to employees should not be considered for disallowance under section 40A(5) of the Income-tax Act, 1961 ?

(iii) Whether, the assessee is entitled in law and on facts of the case to the allowance of expenditure incurred in connection with issuance of bonus shares?

2. Similarly, the Tribunal has also referred to the following question of law for the assessment year 1983-84:_

(iv) Whether, the Appellate Tribunal is right in law and on facts in confirming the view taken by the Commissioner of Income-tax in allowing deduction of Rs.49,600/- under Section 80 HHC on export turnover for the assessment year 1983-84?

3. Heard Mr Manish Bhatt, learned Sr. Standing Counsel appearing on behalf of the applicant and the Official Liquidator on behalf of the respondent - Company as the Company is at present in liquidation.

4. The facts of the case as revealed from the statement of case drawn by the Tribunal are that during the course of assessment proceedings, the respondent assessee has claimed that the expenditure incurred on account of medical benefits, house rent allowance and personal accident insurance premium of Managing Directors should not be considered for the purposes of disallowance under Section 40(c) of the Income-tax Act, 1961. The Income-tax Officer, however, disallowed the claim of the

assessee and being aggrieved of the said order, appeal was filed before CIT (Appeals), who after following the order of the Tribunal (Special Bench) in the case of Blackie & Sons (P) Ltd., as well as the decision of the Delhi High Court in the case of Lala Shridhar 83 ITR 192 accepted the assessee's claim.

Being aggrieved of the said order of the CIT (Appeals), the revenue has preferred second appeal before the Tribunal and the Tribunal has upheld the said order of the CIT (Appeals).

So far as question No.2 is concerned, the Tribunal has observed that the assessee had claimed that the cash payment of house rent allowance made to its employees should not be considered for disallowance under Section 40A(5) of the Act. This claim of the assessee was also rejected by the Income-tax Officer and appeal was preferred by the assessee before CIT (Appeals) and following his order for earlier assessment year i.e. 1981-82, the CIT (Appeals) accepted the assessee's claim. The Tribunal has upheld the finding given by the CIT (Appeals) in this regard.

So far as the third question is concerned, the Tribunal has accepted the assessee's clam and directed the ITO to allow the expenditure incurred in connection with the issuance of bonus shares.

On all the aforesaid three issues, the Revenue is in reference before us for both the assessment years i.e. 1982-83 and 1983-84.

5. Over and above, the above referred three questions, there was one more question which was referred to by the Tribunal for assessment year 1983-84 and that is in respect of the assessee's clam under Section 80 HHC on export turnover.

As far as this question is concerned, the Tribunal has observed that the provisions contained in Chapter VIA of the Act are not difficult to comprehend if one keeps in mind the various sub-heads contained in that Chapter. Once the gross total income of the assessee is a positive figure as in this case of Rs.55,500/-, the assessee cannot be denied deduction claimed under Section 80 HHC of the Act, merely on the ground that its income from business is a negative figure. The Tribunal has further observed that there are also various other aspects which are in favour of the assessee in claiming deduction under section 80 HHC of the Act. However, the

Tribunal has rest its decision on the ground that the gross total income of the assessee is a positive figure and, therefore, the assessee was entitled to claim deduction under Section 80 HHC of the Act. In the above premises, the above question was referred.

6. At the time of hearing of this Reference, our attention was drawn to the decision of this Court in the case of Gujarat Steel Tubes Ltd. vs. Commissioner of Income-tax (1994) 210 ITR 358. The controversy raised in the first question was resolved by this Court in the aforesaid decision.

As far as medical benefits are concerned, this Court has taken the view that the reimbursement of medical expenses incurred by the directors is a benefit to a director within the meaning of Section 40(c)(i) of the Act.

As far as house rent allowance to directors and cash payment of house rent allowance to the employees are concerned, the same was not to be taken into account in computing disallowance either under Section 40(c) or under Section 40A(5) of the Act. This Court has taken this view in the case of Commissioner of Income-tax vs. Arvind Mills Ltd. (2002) 254 ITR 529.

So far as the personal accident insurance premium of Managing Director is concerned, the same was also considered by this Court in the case of Ambica Mills Ltd. vs. Commissioner of Income-tax, (1999) 235 ITR 265 and this Court has decided the said issue against the assessee and in favour of the revenue.

Considering the above referred three judgments, we are of the view that the Tribunal was not right in holding that the expenditure incurred on account of medical benefits as well as personal accident insurance premium of Managing Directors should not be considered for disallowance under Section 40(c) of the Act.

However, with regard to house rent allowance, the Tribunal was right in taking the view that the said expenditure should not be considered for disallowance under Section 40(c) of the Act.

We, therefore, answer the above question i.e. question No.1 partly in favour of the assessee and partly in favour of the revenue as indicated hereinabove.

7. As far as the second question in respect of cash

payment of house rent allowance to the employees is concerned, the same is squarely covered by the decision of this Court in the case of CIT vs. Arvind Mills Ltd. (supra). In view of the ratio laid down in that case, we are of the view that the Tribunal has taken the right decision in coming to the conclusion that cash payment of house rent allowance to employees should not be considered for disallowance under Section 40A(5) of the Act.

We, therefore, answer question No.2 in the affirmative i.e. in favour of the assessee and against the revenue.

8. So far as the third question is concerned, it is in respect of expenditure incurred on issue of bonus shares. This issue was also considered by this Court in the case of Gujarat Steel Tubes Ltd. vs. CIT (supra). This Court has taken the view that such expenditure is considered to be a capital expenditure.

We, therefore, answer this question in the negative i.e. in favour of the revenue and against the assessee.

9. So far as the question regarding 80 HHC claim for assessment year 1983-84 is concerned, the issue was at length discussed by this Court in the recent decision in the case of Commissioner of Income-tax vs. Arvind Mills Ltd. (supra) wherein after examining in detail the entire scheme of the Act and considering the relevant provisions as well as the authorities on the subject, this Court has come to the conclusion that once capital gains forms part of the income, which is to be included for the purpose of ascertaining the total income, the charge specified in Section 4 gets attracted. Thus, the moment this exercise has been undertaken, the figure of total income is arrived at and it is from this figure that deduction under Section 80 HHC is provided being the specified percentage of the export turnover.

Following the aforesaid decision, we hold that the Tribunal was justified in upholding the order of the Commissioner of Income-tax on this issue. We, therefore, answer this question in the affirmative i.e. in favour of the assessee and against the revenue.

10. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-